

# STATE OF NEW HAMPSHIRE

## PROBATE COURT

### PROCEDURE BULLETIN 10

**RELATIVE TO: Motion for Extension of Time; RSA 548:5-a**

**This procedure bulletin is prepared for informational purposes in processing case files. It is not intended to provide parties with legal advice.**

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RSA 548:5-a addresses filing, default, and citation dates for inventories, accounts, annual reports, statements of voluntary administration, and waiver of administration affidavits. RSA 556:28 addresses extensions of time for filing and prosecuting claims against the estate of a deceased person. Neither statute, however, addresses motions for extensions of time. Motions for extensions of time may be filed and will be granted or denied at the judge's discretion. A court order that grants a motion for extension of time supersedes the applicable time standards of RSA 548:5-a. Specifically, when a court grants a motion for extension of time, the court orders performance by a date certain and specifies what action shall be taken if performance does not occur. If performance does not occur by the date certain, the case does not revert to the default and citation time standards of RSA 548:5-a. Rather, the party failing to perform by the date specified in the court order is subject to the previously specified action, i.e., default, citation, show cause order, hearing, etc.

For the purpose of this Bulletin, an "extension" refers to a motion for extension of time that is granted by the court. Motions for extension of time may be filed at any time. In almost all cases, however, motions for extension of time will be filed prior to the expiration of the "grace period," contained in RSA 548:5-a, between the required filing date and the default date. Courts will only consider motions for extension of time which request that the required performance date be extended beyond the expiration of the statutory grace period, i.e., the default date.

If a party files a motion for extension of time requesting a new default date that is actually prior to the original default date, the court will not act on the motion. Rather, the register will return the motion to the moving party, along with the completed template "Return of Motion -Extension of Time" (PRD 1106.dot). The completed template (PRD 1106.dot) will explain why the motion is returned with no action and will reiterate the original default date for emphasis. The register will retain a copy of the completed template (PRD 1106.dot) in the case file.

For the purpose of any subsequent filings, extensions do not change the original anniversary date. The number of extensions granted in any individual case, or the length of an extension, lies within the discretion of the judge. However, please also refer to Probate Court Rule 12 which states: "Motions to enlarge the time prescribed by these rules or by court order for doing any act are not favored."

The following examples are presented for the purpose of explanation only.

### **Example 1 - Account Timetable with No Extension**

An account has an anniversary date of January 1. The fiduciary's statutory 90-day grace period for filing the account begins running on January 2. On April 1 the 90 day grace period expires. If the fiduciary has not filed the account by that date, the fiduciary is immediately in default. The register has 10 days (from April 2 to April 11) to give notice of the default by first class mail to the fiduciary. If the fiduciary neither files the account, nor shows good cause for the failure to file the account within 30 days after notice of the default, the court will immediately issue a citation to the fiduciary for further action. The next annual account is due on January 1 of the following year as the anniversary date is not affected by the grace period, default, or citation dates.

### **Example 2 - Account Timetable with Extension**

An account has an anniversary date of January 1. The fiduciary's statutory 90-day grace period for filing the account begins running on January 2. On February 1 the fiduciary determines that the account will not be ready for filing until March 1 and files a motion for extension of time, requesting a new performance date of March 1. Since default will not occur until April 1 (the expiration of the 90 day grace period), no extension is necessary. The register returns the motion to the moving party, along with the completed template "Return of Motion - Extension of Time" (PRD 1106.dot), explaining why the motion was not acted upon and reiterating the default date of April 1. The register places a copy of the completed template (PRD 1106.dot) in the case file. On March 15 the fiduciary determines that the account will not be ready for filing until May 1 and files a motion for extension of time, requesting a new performance date of May 1. The court grants the extension to May 1. The fiduciary must now file the account by May 1; the court order granting the extension specifies what action will occur if the account is not filed by May 1. If the fiduciary fails to file the account by May 1, the fiduciary is immediately subject to the previously specified action, i.e., default, citation, show cause order, hearing, etc. Regardless of which action is specified, the time standards of RSA 548:5-a are no longer applicable. The specifics of the court order granting the extension supersede the time standards. For example, a default notice or citation might not be sent. Rather, staff should refer to the court order for the previously specified action. There is no new 90-day grace period. In this example, the next annual account is due on January 1 of the following year; the anniversary date is not affected by the grace period or the extension.

**Last Reviewed:** August 1, 2007

\_\_\_\_\_/s/ David D. King  
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History:

Revised August 1, 2007

Effective August 1, 2001

Formerly Procedure Bulletin 1998-01, Issued 1/1/98